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To: Commissioner for Patents for Examiner Kevin M. Nguyen Group Art Unit 2674	Facsimile No.: 703/872-9306
From: Michele Morrow Legal Assistant to Stephen J. Walder, Jr.	No. of Pages Including Cover Sheet: 14
Message: Enclosed herewith: <ul style="list-style-type: none">• Transmittal Document; and• Reply Brief.	
Re: Application No. 09/477,570 Attorney Docket No: AUS990884US1	
Date: Tuesday, November 02, 2004	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Knabenbauer**Serial No.: **09/477,570**Filed: **January 6, 2000**For: **Three-Dimensional Display
Apparatus****35525**PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

Group Art Unit: 2674

Examiner: **Nguyen, Kevin M.**Attorney Docket No.: **AUS990884US1**RECEIVED
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By:

Michele Morrow
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Sir:

ENCLOSED HEREWITH:

- Reply Brief (37 C.F.R. 41.41).

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

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Docket No. AUS990884US1

NOV 02 2004

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Knabenbauer

Serial No. 09/477,570

Filed: January 6, 2000

For: Three-Dimensional Display
Apparatus§
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Group Art Unit: 2674

Examiner: Nguyen, Kevin M.

Commissioner for Patents
P.O. Box 1450
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By:

Michele Morrow
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REPLY BRIEF (37 C.F.R. 41.41)

This Reply brief is in response to the Examiner's Answer mailed September 7, 2004.

No fees are believed to be required to file a Reply Brief. Any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF REPLY BRIEF.

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GROUPING OF CLAIMS

In the Examiner's Answer, the Examiner states that the claims 2, 4-24, 26 and 28-49 stand or fall together because Appellant's Brief allegedly does not include a statement that this group of claims does not stand or fall together and provides reasons in support thereof. Appellant respectfully disagrees and directs the Board's attention to page 4 of Appellant's Appeal Brief where a section entitled "Grouping of Claims" is provided that sets forth Groups I-XIII of the claims. As stated in this section of Appellant's Appeal Brief, the claims do not stand or fall together but rather, stand or fall in accordance with the grouping of claims set forth thereafter (and which is reproduced below). Furthermore, Appellant's Appeal Brief states that the reasons for these groupings is provided in the arguments section of Appellant's Appeal Brief. The Argument section of Appellant's Appeal Brief includes separate arguments for each of the groupings of claims set forth. Thus, Appellant's Appeal Brief contains a statement that the claims do not stand or fall together and provides reasons for the groupings in the Arguments section of the Appeal Brief. Therefore, the Examiner's Answer is in error when concluding that the claims stand or fall together. The grouping of claims set forth in Appellant's Appeal Brief is reproduced below along with the pages of the Appeal Brief where the arguments for these groups appear:

Group I:	claims 2, 14, 19, 20, 22-24, 26, 40, 45 and 47-49;	(Appeal Brief, pages 5-16)
Group II:	claims 4 and 29;	(Appeal Brief, pages 16-18)
Group III:	claims 5 and 30;	(Appeal Brief, page 18)
Group IV:	claim 28;	(Appeal Brief, page 18)
Group V:	claims 6 and 31;	(Appeal Brief, page 18)
Group VI:	claims 7 and 32;	(Appeal Brief, page 18)
Group VII:	claims 8 and 33;	(Appeal Brief, pages 18-19)
Group VIII:	claims 9 and 34;	(Appeal Brief, page 19)
Group IX:	claim 35;	(Appeal Brief, page 19)
Group X:	claims 10-12 and 36-38;	(Appeal Brief, pages 19-20)
Group XI:	claims 13 and 39;	(Appeal Brief, page 20)
Group XII:	claims 15-18 and 41-44;	(Appeal Brief, page 20)
Group XIII:	claims 21 and 46.	(Appeal Brief, pages 20-21)

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RESPONSE TO EXAMINER'S REMARKS**I. Response to Examiner's Remarks Regarding Claims 2 and 26****A. Response to Examiner's Remarks Regarding Krembs**

In response to Appellant's arguments with regard to the application of the Krembs reference to the features of claims 2 and 26, the Examiner's Answer states:

Appellant states that "Krembs does not teach such light emitting elements having an anode, a cathode, a gas volume and a phosphorus material," at page 6. In response, Examiner disagrees because Krembs expressly teaches recited in col. 2, lines 18-20, the three-dimensional gas discharge display array is formed by a plurality of parallel two-dimensional gas discharge matrices 5. The firing potential of different polarities is impressed on each of the two electrodes associated with a given intersecting point in the gas display array contained in box 7. At the point where these two electrodes intersect the applied voltages add such that the potential difference between the two electrodes is greater than the firing potential. This causes a discharge at this point (col. 2, lines 47-54) as mentioned earlier. Thus, different polarities of each of the two electrodes at the point inherently perform an anode and a cathode.

(Examiner's Answer, Page 9)

It is respectfully submitted that the Examiner's Answer does not address the actual argument presented by Appellant in Appellant's Brief. Specifically, Appellant argued the following:

Appellant respectfully submit that claim 2 specifically states that the red, green and blue light emitting elements each include a cell having an anode, a cathode, a gas volume and a phosphorus material. Thus, the Final Office Action's admission that Krembs does not teach a red, green, and blue light emitting elements is an admission that Krembs does not teach such light emitting elements having an anode, a cathode, a gas volume and a phosphorus material. While the energized wires in Krembs may serve the functions of an anode and a cathode, and the box of Krembs is filled with a gas, arguendo, there is no teaching or suggestion in Krembs that each pixel in a three dimensional array of pixels includes a red, green and blue light emitting element, and that each of the red, green and blue light emitting element of each pixel has an anode, a cathode, a gas

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volume and a phosphorus material. To the contrary, all that is found in Krembs is a gas filled volume with an array of wires that cause discharges at crossing points to cause a point of light.

(Appellant's Appeal Brief, pages 6-7)

Thus, Appellant's argument is that Krembs does not teach a three dimensional array of light emitting elements, wherein each light emitting element is a pixel that has a red, green and blue light emitting element, and that each of the red, green and blue light emitting elements includes a cell having an anode, a cathode, a gas volume and a phosphorus material. Appellants are not merely arguing that Krembs does not teach an anode, a cathode, a gas volume and a phosphorus material in general, but the specific arrangement of features recited in claims 2 and 26. The Examiner's rejection and response to Appellant's arguments does not address the specific arrangement of features recited in claims 2 and 26 but merely restates the general teachings of Krembs as teaching a gas volume and an array of wire grids whose wires may allegedly operate as anodes and cathodes at their crossings.

The Examiner appears to be equating the two dimensional gas discharge matrices, i.e. the grids of wires, in Krembs with the cells recited in claims 2 and 26. However, such a position does not address the specific features of claims 2 and 26. For example, each of the wire grids in Krembs does not include its own gas volume and phosphorus material. Thus, the wire grids are not cells as they are recited in claims 2 and 26.

Furthermore, in the configuration of Krembs, one wire grid is not able to generate a green light while another wire grid is able to generate a red light and a third wire grid is able to generate a blue light. To the contrary, the wire grids in Krembs are placed in the box 7 which permits gas to circulate throughout the entire box "because of the open construction of the two-dimensional gas discharge matrices 5" (column 2, lines 72-74). Thus, the discharges generated by the crossing wires in all of the two-dimensional gas discharge matrices 5 are used to emit the same color light. As a result, the two-dimensional gas discharge matrices 5 also cannot be considered to be red, green and blue light emitting elements.

Moreover, if the Examiner intends to interpret the two-dimensional gas discharge matrices 5 to be the pixels of a three-dimensional array of pixels, then where are the red, green and blue light emitting elements that each have a cell having their own anode, cathode, gas

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volume, and phosphorus material? The Examiner may be interpreting the crossing points of the wires as the cells of such pixels, however the crossing points of the wires do not each have an anode, a cathode, a gas volume and a phosphorus material. To the contrary, Krembs only teaches a single gas volume that is shared by all of the two-dimensional gas discharge matrices. Furthermore, Krembs does not even mention a phosphorus material, let alone each crossing point in the two-dimensional gas discharge matrices having an associated phosphorus material.

Appellant is not arguing that Krembs does not teach a gas filled volume or wires that may act as anodes and cathodes where the wires cross. Appellant is arguing that Krembs does not teach a three-dimensional array of pixels that each have red, green and blue light emitting elements and that the red, green and blue light emitting elements each include a cell having an anode, a cathode, a gas volume and a phosphorus material. The Examiner has admitted that Krembs does not teach red, green and blue light emitting elements. Thus, if the Examiner agrees that Krembs does not teach red, green and blue light emitting elements, the Examiner must be in agreement that Krembs does not teach that each of a red, green and blue light emitting element include an anode, a cathode, a gas volume and a phosphorus material. Merely alleging that Krembs in general teaches a gas filled volume with wires that may act as anodes and cathodes does not address the specific features of claims 2 and 26 argued by Appellant.

In short, other than teaching a three dimensional display device, Krembs does not teach or suggest any of the specific features of claims 2 and 26 arranged in the manner set forth in the claims. The Examiner's remarks do not provide any reasoning as to why the specific configuration of elements set forth in claims 2 and 26, i.e. a three-dimensional array of pixels, each pixel having red, green and blue light emitting elements, and each of the red, green and blue light emitting elements having a cell with an anode, a cathode, a gas volume and a phosphorus material, is allegedly taught by the general gas-filled box having grids of wires in Krembs.

B. Response to Examiner's Remarks Regarding MacFarlane

In response to Appellant's arguments with regard to the application of the MacFarlane reference to the features of claims 2 and 26, the Examiner's Answer states:

Appellant states that "MacFarlane does not teach red, green and blue light emitting elements," at page 7. In response, Examiner disagrees because MacFarlane expressly teaches a three-dimensional display device comprising a plurality of pixels each including red, green and blue voxels (see fig. 2 and fig. 6, col. 6, lines 7-8 and col. 6, lines 23-24) as mentioned earlier. Therefore, the modified teaching of Mayer's reference in view of the modified teaching of MacFarlane's reference provide the "substantial evidence" and established a prima facie case to meet the claimed limitations of independent claims 2 and 26.

(Examiner's Answer, pages 9-10)

Yet again, the Examiner chooses to ignore the actual argument against MacFarlane and tries to characterize Appellant's argument as a more general argument than what it actually is. Appellant's argument is not that MacFarlane does not teach red, green and blue light emitting elements. The voxels in MacFarlane may in fact output light of red, green and blue wavelengths. However, the voxels in MacFarlane are not the same red, green and blue light emitting elements as recited in claims 2 and 26. Appellant's actual argument is as follows:

MacFarlane does not provide for the deficiencies of Krembs. MacFarlane teaches a three dimensional display device having a three dimensional array of voxels each being connected to a separate optical fiber. Light is transmitted down the optical fiber to the voxel, which is a sphere or polyhedron of a clear, synthetic resin containing a clear dye which takes on a color when energized by a beam or stream of light. In essence, the voxels are phosphorescent filters at the end of the light conductors where the light exits so that it is viewable to a viewer as a particular point of color. MacFarlane does not teach red, green and blue light emitting elements each including a cell having an anode, a cathode, a gas volume and a phosphorus material. The voxels of MacFarlane do not have an anode, a cathode or a gas volume.

The voxels of MacFarlane do not act as an anode and a cathode. There is no anode or cathode in the voxels of MacFarlane. To the contrary, the ultraviolet light channeled through the conductor, i.e. the optical fiber, energizes the dye in the voxel which causes the voxel to emit light of a particular color of the dye. There is no anode or cathode in the voxels because it is not necessary to have a discharge for energizing the dye in the synthetic resin of the voxel. Thus, while the dye in the material of the voxel may or may not be a phosphorus material, the voxels still do not contain an anode, a cathode or a gas volume.

(Appellant's Appeal Brief, page 7)

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Thus, Appellant's actual argument is that "MacFarlane does not teach red, green and blue light emitting elements that each include a cell having an anode, a cathode, a gas volume and a phosphorus material" not the general argument the Examiner chooses to address in the Examiner's Answer. The Examiner chooses to address this more general argument rather than the actual argument presented by Appellant because the Examiner cannot show where the voxels in MacFarlane have any anode, cathode or gas volume. Appellant's have shown in the arguments presented in Appellant's Appeal Brief that the voxels in MacFarlane are beads of resin and that the light is generated via a fiber optic cable and dispersed via the voxels. A bead of resin does not have a gas volume or an anode and cathode. A fiber optic cable does not include an anode and a cathode. The Examiner cannot refute these facts and thus, chooses not to address them at all but to characterize Appellant's argument as something it is not. Therefore, the Examiner has failed to show where MacFarlane teaches any of the features of claims 2 and 26, other than generally teaching red, green and blue light emitting elements.

Since neither Krembs nor MacFarlane teach or suggest red, green and blue light emitting elements that each include a cell having an anode, cathode, a gas volume and a phosphorus material, any alleged combination of Krembs and MacFarlane still would not result in the invention as recited in claims 2 and 26 being taught or suggested. Furthermore, as argued in Appellant's Appeal Brief, there is absolutely no motivation to combine the reference and the reference are not actually combinable in the manner alleged by the Examiner.

C. Response to Examiner's Remarks Regarding Combination of Krembs and MacFarlane

Appellant offered detailed arguments to support the fact that there is no motivation to combine the references in the manner alleged by the Examiner and provided reasoning as to why the teachings of the two references could not be combined due to their fundamental differences in operation and arrangement. Rather than addressing these arguments, the Examiner merely chooses to recite form paragraphs based on *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Thus, rather than explaining how a resin and fiber optic based voxel display (MacFarlane) could be combined with a gas discharge box having a

plurality of two-dimensional wire grids (Krembs), the Examiner merely states that he provided a motivation and that the rejection is not based on hindsight. Just because the Examiner alleges a motivation does not in itself mean that there actually is a motivation to combine the references. The motivation offered by the Examiner is not based at all on any reasonable interpretation of the references let alone any actual suggestion in any of the references. The fact is, one of ordinary skill in the art would not even consider combining a gas filled box and wire grid type display with a fiber optic/voxel based display because such a combination is inoperable.

Moreover, the Examiner's response to the argument that the rejection is based on hindsight amounts to saying that simply because Krembs was issued 27 years prior to MacFarlane that somehow that means that the rejection is not based on hindsight. This shows that the Examiner clearly does not understand the concept of hindsight. Just because two references have two different dates of publication does not mean that the rejection is not based on hindsight. The issue is whether the Examiner has gleaned knowledge from Appellant's own disclosure and used this knowledge in an attempt to combine and modify references to arrive at the claimed invention or whether the combination and modification of the teachings of the references is solely based on the teachings and suggestions in the references and the knowledge of one of ordinary skill in the art. Just because the publication dates of the references are 27 years apart does not mean that the Examiner did not use hindsight in making the rejection.

Krembs clearly shows a monochromatic three-dimensional display. How would the Examiner modify Krembs to include red, green and blue light emitting elements? The Examiner never once addresses this. The Examiner merely states that simply because MacFarlane teaches voxels that may be red, green and blue that somehow this means that the Krembs reference could be modified to provide red, green and blue light emitting elements. How? While the voxels in MacFarlane may have different colors, how would one modify a monochromatic gas filled box based display to have a plurality of colors? There is no teaching or suggestion in either reference as to how to do this. The only teaching or suggestion to provide a three dimensional display having a three dimensional array of pixels each pixel having red, green and blue light emitting elements and each of the red, green and blue light emitting elements having a cell with an anode, a cathode, a gas volume and a phosphorus material, is provided by Appellant's own claims. Thus, despite the allegations made by the Examiner, one cannot simply make Krembs have a red,

green and blue light emitting element simply because MacFarlane teaches voxels that may have a plurality of different colors.

As discussed in detail in Appellant's Appeal Brief, there simply is no way to combine the teachings of the two references without destroying the intended operation of at least one or both of them. Thus, the only reason why one would try to attempt such a combination would be based on a hindsight attempt at reconstructing the invention as recited in claims 2 and 26 using the elements of Krembs and MacFarlane.

D. Response to Examiner's Remarks Regarding Mayer

In response to Appellant's arguments with regard to the Mayer reference as it is applied to claims 2 and 26, the Examiner states:

Appellant states that "Mayer does not teach a three dimensional of light emitting elements having an anode, a cathode, a gas volume and a phosphorus material," at page 13. In response, Examiner disagrees because Mayer et al. expressly teaches two layers or two panels (see figure 9) which make three-dimensional display. Aluminum wire, for example, provides a suitable conductor for this purpose which may be suitably anodized (col. 2, lines 43-46). Thus, at least two cross aluminum wires at grid 52 or grid 54 or grid 56 have an anode; therefore, if the grid is the anode, then the other grid inherently has to be the cathode. A gas volume 17, and a phosphorus material (see figure 9, column 6, lines 27-52) as mentioned earlier.

(Examiner's Answer, page 11)

Once again, rather than addressing the actual arguments made by Appellant with regard to Mayer, the Examiner chooses a more general argument to respond to. Appellant's actual argument is as follows:

Mayer does not teach a three dimensional matrix of light emitting elements wherein each element is a pixel that has a red, green and blue light emitting element and wherein each of the red, green and blue light emitting elements include a cell having an anode, a cathode, a gas volume and a phosphorus material, as recited in claims 2 and 26. Mayer actually teaches that each panel in the three dimensional embodiment may emit a different color by

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using different gases or different phosphors. Mayer does not teach that each pixel of a three dimensional display includes a red, green and blue light emitting element that each include a cell having an anode, a cathode, a gas volume and a phosphorus material. To the contrary, each "pixel" in the Mayer three dimensional embodiment has a single color because the panels in Mayer are monochromatic. Nowhere in Mayer is there any teaching of a pixel that has a red light emitting element, a green light emitting element and a blue light emitting element, and wherein each of the red, green and blue light emitting elements includes a cell having an anode, a cathode, a gas filled volume and a phosphorus material.

Furthermore, the Final Office Action admits that Mayer does not teach that each pixel has a red light emitting element, a green light emitting element, and a blue light emitting element, wherein the red light emitting element, green light emitting element, and blue light emitting element each include a cell having an anode, a cathode, a gas volume and a phosphorus material.

From the above, it is clear that Appellant's argument is that the panels in Mayer are not pixels or cells and there is no element in Mayer that is equivalent to pixels or cells. It is not clear what the Examiner is equating the panels in Mayer to in the claim. Whether the panels in Mayer are pixels, red, green, or blue light emitting elements, or cells is not clear. It seems that the Examiner is equating the panels with the red, green and blue light emitting elements. If this is so, wherein in Mayer are the pixels and the cells of claims 2 and 26 taught? The Examiner fails to address this. Rather, the Examiner merely makes statements that Mayer teaches layers of panels that may have different colors and wires that may act as cathodes and anodes. Even if this is true, where are the other elements of claims 2 and 26? As with every other rejection made by the Examiner, rather than actually examining all of the features of the claims, the Examiner picks and chooses features that he wants to address and ignores the others.

In Appellant's argument, Appellant assumed that the Examiner was interpreting Mayer as teaching each panel having pixels within the panel (Appellant must make assumptions as to how the Examiner is interpreting the reference since the Examiner is never clear as to what features of the claims are being rejected by the elements in the references). If this is so, then in Mayer, each pixel does not have a red, green and blue light emitting element, each of these light emitting elements having a cell with a cathode, an anode, a gas volume and a phosphorus material. This is because each pixel within a panel has only one color due to the fact that the panels in Mayer are constructed in a similar manner as the box in Krembs, i.e. a gas filled panel with a wire grid. Thus, if the panels of Mayer are considered colored light emitting elements and each panel has

pixels, then each pixel only has one color and Mayer does not teach the specific feature of the claims 2 and 26 where each pixel has red, green and blue light emitting elements and each of these elements have a cell with an anode, a cathode, a gas volume and a phosphorus material.

Nowhere in Mayer is there any teaching or suggestion of a three dimensional array of pixels, each pixel having a red, green and blue light emitting element, and each of the red, green and blue light emitting elements having a cell with an anode, a cathode, a gas volume and a phosphorus material. At most, Mayer teaches different color panels that have anodized wires. Mayer does not teach or suggest the specific features of claims 2 and 26.

The Examiner's statements with regard to the MacFarlane reference as combined with Mayer are considered to be addressed by Appellants rebuttal of the Examiner's response based on MacFarlane above. The Examiner's statements with regard to the fact that there is no motivation to combine MacFarlane and Mayer is essentially the same as the Examiner's response to Appellant's arguments regarding the combination of MacFarlane and Krembs above and thus, is considered to be addressed by Appellant's arguments above.

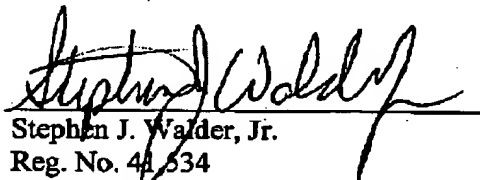
II. Response to Examiner's Remarks Regarding Dependent Claims

For each of Appellant's arguments presented with regard to the various groupings of the dependent claims, the Examiner merely reiterates the statements made by the Examiner in the Final Office Action. Appellant respectfully submits that Appellant offered detailed and reasoned arguments in Appellant's Appeal Brief as to why each of the dependent claims defines over the alleged combination of references on their own, in addition to being dependent upon claims 2 and 26, respectively. The Examiner has not provide any further reasons as to why Appellant is allegedly in error. Thus, Appellants respectfully submit that, for the many reasons set forth in Appellant's Appeal Brief, the Board should overturn the rejections of dependent claims 4-24 and 28-49.

CONCLUSION

For the reasons stated above, and in Appellant's Appeal Brief filed June 16, 2004, Appellant respectfully submits that the rejections under 35 U.S.C. § 103(a) of claims 2, 4-24, 26 and 28-49 has been overcome. Accordingly, Appellant respectfully requests that the Board of Patent Appeals and Interferences overturn the rejections set forth in the Final Office Action.

Respectfully submitted,



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